

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

<b>Applicant:</b>	Vincent Jemelin	<b>Examiner:</b>	Walter Aughenbaugh
<b>Serial No.:</b>	10/575,981	<b>Art Unit:</b>	1782
<b>Filed:</b>	April 17, 2006	<b>Docket:</b>	19724
<b>For:</b>	CYCLIC OLEFIN COPOLYMER EXTERNAL CAPSULE FOR PRESERVING MEDICAL DEVICE		
<b>Conf. Num.:</b>	8604	<b>Dated:</b>	October 14, 2010

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REMARKS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:


Pursuant to the Pre-Appeal Brief Conference Pilot Program announced in the July 12, 2005 Notice in the Official Gazette, Applicant respectfully submits the following remarks in support of a Pre-Appeal Brief Request for Review filed concurrently with a Notice of Appeal, in response to the Official Action dated April 14, 2010.

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Dated: October 14, 2010

  
Peter I. Bernstein

### **Clear Error in the Examiner's Rejection Under 35 U.S.C. §103**

Claims 10 and 11 have been rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 3,757,979 to Berghahn (hereinafter "Berghahn") in view of U.S. Patent No. 5,853,833 to Sudo (hereinafter "Sudo'833"). Claim 18 has been rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Berghahn in view of Sudo'833 and further in view of U.S. Patent No. 5,723,189 to Sudo (hereinafter "Sudo'189").

The Examiner's assertion that the combination of Berghahn, Sudo'833 and Sudo'189 teaches all the features recited in Claims 10, 11 and 18 is clearly erroneous.

Independent Claim 10 recites a package for holding a dental implant. The package includes, *inter alia*, a capsule consisting of cyclic olefin copolymer and a cap formed of low-density-polyethylene. According to the claimed invention, the capsule's impermeability to moisture can be controlled under 5% fluid loss per year, to achieve an excellent shelf life for dental implants stored in the package, particularly when an electrolyte or an aqueous solution is used as a storage fluid.

Berghahn discloses, "a container with a special safety closure-bottle assembly designed to deter children from opening such bottles containing hazardous substances" (see Col. 1, Lines 3-5 of Berghahn). Thus, Berghahn only teaches, in a general manner, a bottle, which can be used to contain a substance. Berghahn is completely silent on cyclic olefin copolymer, as evidenced by the statement in the Office Action, "Berghahn fails to teach that the capsule formed consists of cyclic olefin copolymer because Berghahn does not specifically teach cyclic olefin copolymer" (see Page 3, Lines 5-8 of the Official Action dated April 14, 2010Action). Furthermore, the container of Berghahn is specifically designed for preventing children from accessing dangerous pills (see Col. 1, Lines 5-8). Thus, Berghahn does not provide any suitable

premise for a liquid container having predetermined moisture impermeability and/or a special material.

Sudo'833 discloses a sanitary container and a production process thereof, wherein the container consists of an inorganic coating and a base of cyclic olefin copolymer, in order to increase the container's transmission resistance to oxygen and nitrogen. Sudo '833 further teaches that, "[t]he sanitary container according to the present invention is equipped with significantly-improved transmission resistance to oxygen and nitrogen owing to the provision of the inorganic coating" (see Col. 3, Lines 16-19, *emphasis added*).

In the first instance, Sudo'833 requires an inorganic coating in combination with a base of cyclic olefin copolymer. Stated differently, the inorganic coating is indispensable to implement the sanitary container of Sudo'833. A person of ordinary skill in the art would understand that collectively the inorganic coating and the base of cyclic olefin copolymer are the minimum components required to form a sanitary container of Sudo'833.

Furthermore, "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention" *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Applicant respectfully submits that it is improper to ignore Sudo'833's teaching, in its entirety, on the constituent elements of a sanitary container, and doing so is highly suggestive of hindsight reasoning by the Examiner. Sudo'833 clearly teaches that the use of a cyclic olefin polymer is not satisfactory due to the transmission levels of oxygen and nitrogen ("It was [sic] however come to the inventors' attention that sanitary containers making use of the above polymer are not fully satisfactory, in and of itself, in the transmission resistance to oxygen and nitrogen". See Col. 2, Lines 59-62 of Sudo'833). Thus, the teaching of Sudo'833, in its entirety,

does not support the finding of a sanitary container consisting of only cyclic olefin copolymer. Moreover, a person of ordinary skill in the art would not simply disregard the use of the inorganic coating for the intended purpose of obtaining a satisfactory sanitary container under the teaching of Sudo'833.

Sudo'189 discloses a container for a sanitary article. The container has a multi-layered body consisting of a layer of cyclic resin, a layer of adhesives, a layer of mixed resin and a layer of other resin (see Figure 4 and Co. 20, Lines 43-47). Sudo'189 also fails to teach or suggest a capsule consisting of cyclic olefin copolymer.

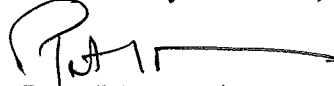
Hence, none of Berghahn, Sudo'833 and Sudo'189, taken alone or in any combination, teach or suggest the combination of features recited in Claim 10 and Claims 11 and 18 depending from Claim 10. Therefore, Applicant's claimed invention is neither anticipated by nor rendered obvious by these cited prior art references.

A decision by the panel to withdraw the rejection of Claims 10, 11 and 18 under 35 U.S.C. §103(a) based on Berghahn, Sudo'833 and Sudo'189 is respectfully requested.

### **Conclusion**

In view of the above, it is respectfully submitted that this application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued.

Respectfully submitted,



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